CCRB INVESTIGATIVE RECOMMENDATION

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Investigator:		Team:		CCRB Case #:	∣⊏	Force		Discourt.		U.S.
		Squad #	[‡] 10	201408513	✓	Abuse		O.L.		Injury
Incident Date(s)		Locatio	n of Incident	:		Precinct	:	S.O.L	Exp	oires:
Sat, 08/16/2014 1:00 AM						47		02/1	16/20	16
Date/Time CV Reported		CV Rep	orted At:	How CV Reporte	d:	Date/Time R	Receive	d at CCRB		
Mon, 08/18/2014 5:09 PM		CCRB		Call Processing System		Mon, 08/18/	2014	5:09 PM		
Complainant/Victim	Type		Home Add	Iress						
1.	Comp/V	ictim								
2.	Victim									
Witness(es)			Home Add	lress						
1.										
2.										
3.										
4.										
Subject Officer(s)	Shield		TaxID	Command						
1. POM Daniel Nunez	18750			047 PCT						
Witness Officer(s)	Shield N		Tax No	Cmd Name						
(3)										
Officer(s)	Allegation	on				Inves	tigato	r Recomn		ation
						_		<u></u>		
B . POM Daniel Nunez	Abuse of	Abuse of Authority: PO Daniel Nunez stopped					ubstan	tiated		
D. POM Daniel Nunez		Abuse of Authority: PO Daniel Nunez entered in the Bronx.				D.S	ubstan	itiated		
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Officer(s)	Allegation	Investigator Recommendation
H . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez frisked	H . Substantiated
N . POM Daniel Nunez	Abuse of Authority: PO Daniel Nunez threatened to arrest	N . Unsubstantiated
P. POM Daniel Nunez	Discourtesy: PO Daniel Nunez spoke discourtesously to	P. Unsubstantiated
S . POM Daniel Nunez	Other: PO Daniel Nunez failed to prepare a stop and frisk report as required by Patrol Guide Procedure 212-11.	S . Other Misconduct

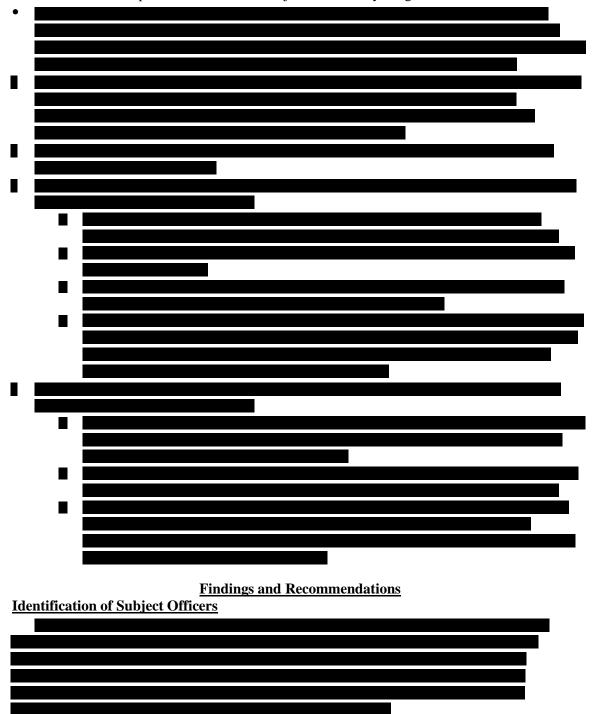
Case Summary

On August 16, 2014, at approximately 1:00 a.m., Mr. was standing in front
of his house, located at the located in the Bronx. PO and and PO Daniel Nunez, both from the 47 th Precinct, stopped their vehicle near Mr. Mr. allegedly
Nunez, both from the 47 th Precinct, stopped their vehicle near Mr. Mr. allegedly
grabbed his waistband and ran away from the officers into his house. PO Nunez and PO
followed him (Allegation B). Sgt. Det. PO
and Lieutenant all from the 47 th Precinct, responded. Lieutenant
broke the door to the house open and Sgt. PO PO
Nunez, and Lieutenant entered (Allegation D , Mr. was in the
vestibule. He was handcuffed and PO Nunez frisked him (Allegation H).
is a three family house. Ms. who is Mr. mother, was in their
apartment, located on the third floor, when Lieutenant and Sgt. entered and
searched the apartment She asked if they had a warrant, and Lieutenant
stated that they did not need a "fucking" warrant Ms asked if
she could call her lawyer, and Lieutenant said she could not use the "fucking" phone
Lieutenant threatened to arrest her, but he did not say for what
Ms. went to the vestibule of the building where she observed Mr.
handcuffed with three officers surrounding him. PO Nunez, PO and an unidentified
officer were calling Mr. a "piece of shit" (Allegations N, and were
threatening to arrest him (Allegation P , and and
left without issuing a summons or arresting anyone.
No Stop, Question, and Frisk Reports were filed in regards to this incident (Allegation S
). Det. PO and Sgt. failed to prepare memo book entries for
this incident (Allegations).
ins mercent (Anegations).
M. J. G. N. N. G. S. Chaire and Chinain III. Assista
Mediation, Notice of Claim, and Criminal Histories
Civilian and Officer CCRB Histories
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PO Nunez has been a member of service for nine years and has the following CCRR

- PO Nunez has been a member of service for nine years and has the following CCRB allegations substantiated against him:
 - o In 200610674, the board substantiated a stop and a search of a person against PO Nunez to which he pled guilty and lost two vacation days.

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- In 201213751, the Board substantiated a stop and a frisk allegation and recommended Command Discipline A, which the NYPD imposed.
- o In addition to the above listed substantiated allegations, PO Nunez has been a subject of 21 other allegations for six complaints. Five of these allegations were for stops, frisks, and searches, which were closed as victim uncooperative, unsubstantiated, or are still open. He has been the subject of one entry allegation.



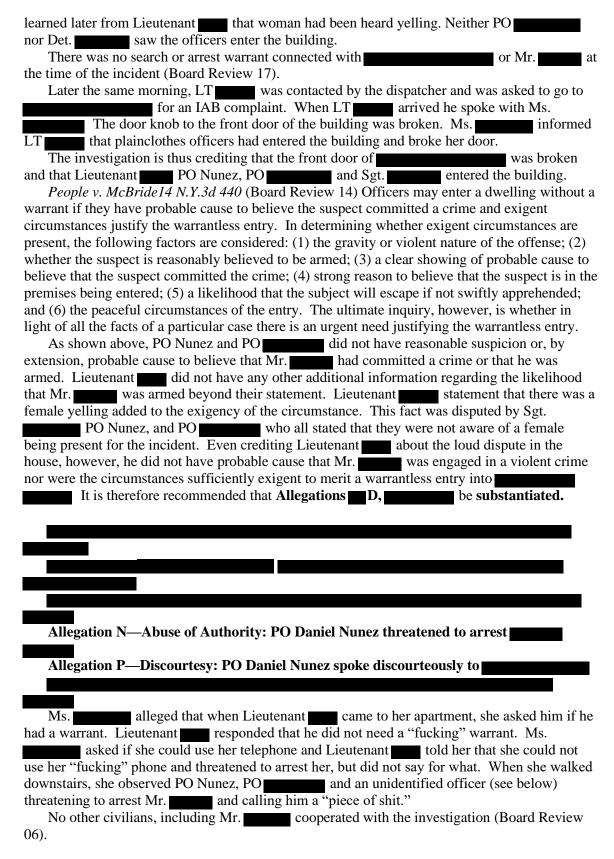
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Investigation Findings and Recommendations
Allegation B—Abuse of Authority: PO Daniel Nunez stopped
Allegation H—Abuse of Authority: PO Daniel Nunez frisked
PO Nunez and PO both stated that they observed Mr. in front of They both recognized Mr. from prior drug arrests and from a search
warrant that was conducted in his apartment at in the previous year. They
did not suspect Mr. of committing any crime when they first observed him. PO Nunez
rolled down his window and asked Mr. "Hey, What's going on?" Mr.
put his hand in his pants near the button clasps, turned, and ran inside his house. PO Nunez did
not see what he grabbed toward, he did not see any outline or bulge in that area, and he did not have any other reason to suspect Mr. of possessing a weapon beyond that he grabbed his
pants and ran, which he had not done on previous arrests. PO saw an outline near Mr.
waistband when he grabbed toward his pants, but he could not describe the shape or
contours of the outline. He did not have any other reason to suspect that Mr. possessed a
weapon beyond what was described above.
PO Nunez and PO chased Mr. toward the front door of
which they entered behind him (see below). PO Nunez stated that Mr. entered his apartment, which is on the third floor, then walked back downstairs with his hands up, stating
that he did not have anything. PO Nunez handcuffed him. PO Nunez did not see any bulges
around Mr. waistband at that time, and he frisked Mr. waistband. He did not
feel any object and he did not find any contraband.
People v. DeBour 40 N.Y.2d 210, 215 (Board Review 15) Officers are permitted to stop a
person when reasonable suspicion of criminality exists and may conduct a frisk when there is
reasonable suspicion to believe that the person is armed. People v. Holmes, 81 N.Y.2d 1056 (Board Review 16) Flight, accompanied by equivocal
circumstances, does not supply reasonable suspicion to justify police pursuit. In order for flight to
justify police pursuit it must be combined with other specific circumstances indicating that the
suspect may be engaged in criminal activity.
People v. Boulware 130 A.D.2d 370 (App. Div. 1st Dep't. 1987)(Board Review 13)
Knowledge of an individual's criminal past is not tantamount to a present indication of criminal activity. "An officer's surmise as to a person's propensity to commit crime, in the absence of
objective indicia that a crime has taken or will be taking place, is an insufficient constitutional
predicate." People v. 115 A.D.3d 38 (App. Div. 1st Dep't. 2014) (Board Review 17).

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v. Haynes, the Court held that the defendant's act of looking away from the police and grabbing at his waistband area in such a way that it seemed as if he was holding onto a bulge or something
heavy combined with flight was an insufficient basis for police pursuit.
Here, there were no objective facts upon which to found a suspicion that criminal activity was
afoot. PO and PO Nunez provided as justification for their stop of Mr. that
they had firsthand knowledge of his criminal background and that he grabbed his pants and ran from them. Mr. does not appear to have a history of being arrested for weapons
possession. Knowledge of his criminal history alone paired with a single grab toward his
waistband without any other determinate observations of an object or bulges did not provide the
officers with reasonable suspicion of criminality. Therefore, PO Nunez and PO were
not justified in stopping Mr. All of their justifications for the frisk were based upon
observation prior to the initiation of the stop. PO Nunez did not have reasonable suspicion to
frisk Mr. It is therefore recommended that Allegations B, and H be substantiated.
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Allegation D—Abuse of Authority: PO Daniel Nunez entered in the Bronx.
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None of the officers at the location acknowledged saying or hearing any officers say the wor "fuck," discuss a search warrant, threaten to arrest anyone, or call Mr.
Without further evidence the investigation was unable to determine, by a preponderance of the evidence, whether Lieutenant PO Nunez, and PO spoke discourteously or
threatened to arrest Mr. or Ms. It is therefore recommended that Allegations N, P, be unsubstantiated.

report as required by Patrol Guide Procedure 212-11. both acknowledged that they stopped Mr. PO Nunez and PO acknowledged frisking Mr. Both acknowledged not preparing a Stop and Frisk Report and there was not Stop and Frisk Report on the Stop and Frisk Log (board review 16 and Board Review 17). Patrol Guide Procedure 212-11 (Board Review 12) states that officers a required to prepare a Stop and Frisk Report whenever they stop and frisk an individual. PO Nunez and PO failed to prepare a Stop and Frisk Report for stopping and It is therefore recommended that **Allegations S** result in **Other** frisking Mr. Misconduct Noted. Pod: 12 Investigator: June 9, 2015 Signature Print Date Supervisor: _ Title/Signature Print Date Reviewer: Title/Signature Print Date Reviewer: _ Title/Signature Print Date

Allegation S—Other Misconduct: PO Daniel Nunez failed to prepare a stop and frisk

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